

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ALASKA PLUMBING AND PIPEFITTING INDUSTRY PENSION FUND; and Robert Hubbard as a Fiduciary of the ALASKA PLUMBING AND PIPEFITTING INDUSTRY PENSION FUND.

Case No. 2:20-cv-00173
COMPLAINT

Plaintiffs,

V.

POLAR REFRIGERATION AND
RESTAURANT EQUIPMENT, INC.; and
COMMERCIAL KITCHEN SOLUTIONS,
LLC.

Defendants.

Plaintiff, Alaska Plumbing and Pipefitting Industry Pension Fund (the “Fund”), by their counsel, Barlow Coughran Morales & Josephson, P.S. and Tucker Arensberg, P.C., file the following Complaint:

1. The Fund brings this action under 29 U.S.C. §§ 1401(b)(1) and 1451(c) of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by the Multi-Employer Pension Plan Amendments Act of 1980 (“MPPAA”) for the collection of withdrawal liability in the amount of \$564,332.20, plus additional statutory damages,

1 including interest, the greater of a second award of interest or liquidated damages, attorneys'
2 fees and costs.

3 2. This Court has federal question jurisdiction over this action pursuant to 28
4 U.S.C. § 1331 because it arises under 29 U.S.C. §§ 1132(e), 1132(f), 1401(b)(1) and 1451(c).

5 3. Venue lies in this District under 29 U.S.C. §§ 1132(e)(2) and 1451(d), because
6 the Fund is administered in this District.

7 4. The Fund is an employee benefit pension plan within the meaning of 29 U.S.C.
8 § 1002(3) that maintains its principal place of business at 7525 SE 24th Street, Mercer Island,
9 Washington 98040.

10 5. The Fund is a multi-employer pension plan within the meaning of 29 U.S.C. §
11 1002(37) and has been established pursuant to Section 302(c)(5) of the Labor Management
12 Relations Act, 29 U.S.C. § 186(c)(5).

13 6. The Fund is maintained for the purpose of providing retirement and related
14 benefits to eligible participants and beneficiaries.

15 7. Plaintiff Robert Hubbard is a fiduciary of the Fund within the meaning of 29
16 U.S.C. § 1002(21)(A).

17 8. Upon information and belief, Defendant Polar Refrigeration and Restaurant
18 Equipment, Inc. ("Polar Refrigeration"), is a corporation which, at all relevant times, had its
19 principal place of business at 557 E. Fireweed Lane, Suite D, Anchorage, Alaska 99503.

20 9. Upon information and belief, Defendant Commercial Kitchen Solutions, LLC
21 ("Commercial Kitchen"), is a corporation which, at all relevant times, had its principal place
22 of business at 557 E Fireweed Lane, Suite C, Anchorage, Alaska 99503.

1 10. Upon information and belief, Defendant Commercial Kitchen acquired
2 Defendant Polar Refrigeration in 2016.

3 11. Upon information and belief, beginning in December of 2019, Defendants
4 moved their place of business to 5430 B Street, Anchorage, Alaska 99518.

5 12. At all relevant times, the Fund was a third-party beneficiary to collective
6 bargaining agreements entered into between Defendant Polar Refrigeration and United
7 Association Plumbers and Steamfitters (“UA”) Local Union 375 and UA Local Union 367
8 (the “Agreements”).

9 13. Under the Agreements, Defendant Polar Refrigeration was obligated to report
10 and submit contributions to the Fund for each hour of covered work performed by its
11 employees.

12 14. In 2018, Defendant Polar Refrigeration permanently ceased contributing to the
13 Fund and therefore completely withdrew from the Fund, within the meaning of 29 U.S.C. §
14 1383(a).

15 15. The Fund determined that Defendant Polar Refrigeration became liable for
16 withdrawal liability in the amount of \$564,332.20 as a result of its complete withdrawal from
17 the Fund.

18 16. In accordance with 29 U.S.C. §§ 1382 and 1399, the Fund sent Defendant Polar
19 Refrigeration a Withdrawal Liability Notice & Demand dated February 21, 2019 (the
20 “Demand Letter”), attached as **Exhibit A**, stating that:

- 21 a. Defendant Polar Refrigeration triggered a complete withdrawal from
22 the Fund, within the meaning of 29 U.S.C. § 1383, thereby incurring
23 withdrawal liability in the amount of \$564,332.20;
b. Defendant Polar Refrigeration was liable for that withdrawal liability

1 pursuant to 29 U.S.C. § 1301(b)(1);

- 2 c. Defendant Polar Refrigeration could discharge the withdrawal liability
 3 by making either (i) a lump sum payment to the Fund in the amount of
 4 \$564,322.20; or (ii) 35 equal quarterly payments of \$20,293.62 each,
 followed by a final monthly payment of \$17,614.38; and
 5 d. If it selected to quarterly payments, Defendant Polar Refrigeration's
 first payment was due on May 1, 2019.

6 17. The Demand Letter also constituted notice to Defendant Commercial Kitchen,
 7 even though it was not addressed to Defendant Commercial Kitchen, pursuant to MPPAA's
 8 "controlled group" rule under 29 USC § 1301(b)(1).

9 18. Under 29 U.S.C. § 1301(b)(1), all trades or businesses under common control
 10 with the contributing employer are treated as a single employer and thus are jointly and
 11 severally liable for the withdrawal liability of the contributing employer. It is well-established
 12 under the MPPAA that notice to one controlled group member is notice to all other members
 13 of the same controlled group.

14 19. Upon information and belief, Defendant Commercial Kitchen was a member
 15 of Defendant Polar Refrigeration's controlled group at the time of Defendant Polar
 16 Refrigeration's complete withdrawal from the Fund in 2018 because it acquired Defendant
 17 Polar Refrigeration in or around 2016 and the two Defendants were operating at the same
 18 location.

19 20. Despite their receipt of the Demand Letter, Defendants did not make their first
 20 quarterly payment to the Fund by May 1, 2019, as required by the Demand Letter and 29
 21 U.S.C. § 1399(c)(2).

22 21. In accordance with 29 U.S.C. § 1399(c)(5), the Fund sent Defendants a Default
 23 Letter dated July 11, 2019 (the "Default Letter"), attached as **Exhibit B**, notifying them of

1 their failure to make the first quarterly payment under the Demand Letter and warning that if
 2 such failure was not cured within 60 days (*i.e.*, on or before September 11, 2019), the Fund
 3 would file a federal lawsuit in which the Fund would accelerate and recover all of the
 4 outstanding withdrawal liability, plus all accrued interest, attorneys' fees, liquidated damages,
 5 and costs.

6 22. Defendants failed to cure the delinquency on or before September 11, 2019. In
 7 fact, Defendants still have not, to date, made any of the quarterly payments under the schedule
 8 in the Demand Letter.

9 23. Pursuant to 29 U.S.C. § 1401(a)(1), Defendants have waived their ability to
 10 contest the Fund's withdrawal liability assessment because they did not demand arbitration.

11 24. Under 29 U.S.C. § 1399(b)(2)(A), a contributing employer may, no later than
 12 90 days after receiving notice of the pension fund's withdrawal liability assessment, request
 13 the fund to review any specific matter relating to the determination of the employer's liability
 14 and the schedule of payments. Under 29 U.S.C. § 1399(b)(2)(B), the pension fund must then
 15 conduct a reasonable review of all matters raised in the employer's request, although there is
 16 no specific deadline for doing so. An employer's deadline to demand arbitration under 29
 17 U.S.C. § 1401(a)(1) is based on these events.

18 25. According to 29 U.S.C. § 1401(a)(1), the employer must demand arbitration
 19 after the earlier of (a) 60 days from the pension fund's response to the employer's request for
 20 review under 29 U.S.C. § 1399(b)(2)(B), or (b) 180 days after the employer's request for
 21 review under 29 U.S.C. § 1399(b)(2)(A). In turn, under 29 U.S.C. § 1399(b)(2)(A).

22 26. Defendants did not submit a request for review under 29 U.S.C.
 23 § 1399(b)(2)(A) within the 90 days of receiving the Fund's Demand Letter (*i.e.*, by May 10,

1 2019).

2 27. Even if Defendants had submitted a timely request for review on the last
 3 possible day (and they did not), they would have been required under 29 U.S.C.
 4 § 1401(a)(1)(B) to demand arbitration no later than November 6, 2019 (*i.e.*, 180 days from
 5 May 10, 2019), which they did not do.

6 28. Because Defendants did not initiate arbitration against the Fund within the
 7 deadline specified under 29 U.S.C. § 1401(a)(1), the amount of withdrawal liability claimed
 8 in the Demand Letter is, according to 29 U.S.C. § 1401(b)(1), due and owing as a matter of
 9 law.

10 29. Because Defendants failed to cure their first missed quarterly payment within
 11 60 days of receiving the Default Letter, they are, according to 29 U.S.C. § 1399(c)(5),
 12 immediately liable to the Fund for the entire amount of \$564,332.20 in withdrawal liability,
 13 as opposed to being subject to the payment schedule in the Demand Letter.

14 30. Defendants are also liable to the Fund for the additional statutory damages
 15 under 29 U.S.C. § 1132(g)(2) – interest, the greater of a second award of interest or liquidated
 16 damages, attorneys’ fees and costs – as a result of their failure to make their withdrawal
 17 liability payments in accordance with the payment schedule set forth in the Demand Letter.

18 31. Those damages are owed to the Fund because, under 29 U.S.C. § 1451(b),
 19 delinquent withdrawal liability payments are treated in the same manner as delinquent
 20 contributions under 29 U.S.C. §1145. In turn, the damages under 29 U.S.C. § 1132(g)(2) are
 21 mandatory when a pension fund prevails in an action to compel delinquent contributions under
 22 § 1145.

23 32. In accordance with the Pension Fund’s Trust Agreement and Withdrawal

1 Liability Procedures, liquidated damages are calculated at 20% of the principal withdrawal
2 liability, interest is calculated at 12% per annum, and the Fund is entitled to all reasonable
3 attorneys' fees and reasonable costs incurred in the prosecution of this action.

4 WHEREFORE, Plaintiff Alaska Plumbing and Pipefitting Industry Pension Fund
5 demand judgment against Defendants for withdrawal liability in the amount of \$564,332.20,
6 plus accrued interest, the greater amount of interest or liquidated damages, and reasonable
7 attorneys' fees and costs incurred by the Fund.

8 Dated: February 4, 2020.

9 s/ Jeffrey G. Maxwell

10 Jeffrey G. Maxwell, WSBA #33503
11 Barlow Coughran Morales & Josephson, P.S.
12 1325 Fourth Avenue, Suite 910
13 Seattle, Washington 98101
14 (206) 224-9900
15 jeffreym@mrbclaw.com

16 Local Counsel for Plaintiffs

17 -and-

18 Neil J. Gregorio, PA Id. #90895
19 Scott R. Leah, PA Id. #57564
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32 Counsel for Plaintiffs

EXHIBIT A

Alaska Plumbing and Pipefitting Industry Pension Fund

Physical Address 7525 SE 24th Street, Suite 200, Mercer Island, WA 98040 • Mailing Address PO Box 34203, Seattle, WA 98124
Phone (800) 732-1121 or (206) 441-7574 • Fax (206) 505-9727 • Website www.akpipetrades.com

Administered by
Welfare & Pension Administration Service, Inc.

Sent Via Certified Mail

February 21, 2019

Polar Refrigeration
557 E Fireweed Lane, Suite D
Anchorage, AK 99503

**RE: Alaska Plumbing and Pipefitting Industry Pension Fund –
Withdrawal Liability Assessment**

This letter informs you that the Alaska Plumbing and Pipefitting Industry Pension Fund (“Fund”) has determined that Polar Refrigeration (“the Employer”) completely withdrew from the Fund during the 2018 Plan Year. This letter informs you of the withdrawal liability attributable to the Employer as a result of the withdrawal and provides you with a schedule for payments. This letter constitutes the Fund’s formal notice of withdrawal liability and demand for payment in accordance with the notification requirements of ERISA § 4219(b)(1)(A) (29 U.S.C. § 1399).

In accordance with ERISA and the Fund’s withdrawal liability procedures, the Fund’s actuaries have determined that the withdrawal liability attributable to the Employer is \$564,332.20. The calculation and data used for determining this withdrawal liability amount is included in the attached withdrawal liability assessment (Exhibit 1).

Demand for Payment

The Fund demands that the Employer pay its withdrawal liability assessment in accordance with the following schedule:

Payment No.	Amount	Due Date
1	\$20,293.62	5/1/2019
2	\$20,293.62	8/1/2019
3	\$20,293.62	11/1/2019
4	\$20,293.62	2/1/2020
5	\$20,293.62	5/1/2020
6	\$20,293.62	8/1/2020
7	\$20,293.62	11/1/2020
8	\$20,293.62	2/1/2021
9	\$20,293.62	5/1/2021
10	\$20,293.62	8/1/2021

Polar Refrigeration
 February 21, 2019
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Payment No.	Amount	Due Date
11	\$20,293.62	11/1/2021
12	\$20,293.62	2/1/2022
13	\$20,293.62	5/1/2022
14	\$20,293.62	8/1/2022
15	\$20,293.62	11/1/2022
16	\$20,293.62	2/1/2023
17	\$20,293.62	5/1/2023
18	\$20,293.62	8/1/2023
19	\$20,293.62	11/1/2023
20	\$20,293.62	2/1/2024
21	\$20,293.62	5/1/2024
22	\$20,293.62	8/1/2024
23	\$20,293.62	11/1/2024
24	\$20,293.62	2/1/2025
25	\$20,293.62	5/1/2025
26	\$20,293.62	8/1/2025
27	\$20,293.62	11/1/2025
28	\$20,293.62	2/1/2026
29	\$20,293.62	5/1/2026
30	\$20,293.62	8/1/2026
31	\$20,293.62	11/1/2026
32	\$20,293.62	2/1/2027
33	\$20,293.62	5/1/2027
34	\$20,293.62	8/1/2027
35	\$20,293.62	11/1/2027
36	\$17,614.38	2/1/2028

The first payment of \$20,293.62 is due on or before May 1, 2019. Payment should be mailed to:

Alaska Plumbing and Pipefitting Industry Pension Fund
 PO Box 34203
 Seattle, WA 98124-1203

Please be advised that pursuant to ERISA § 4219(b)(2) you may:

1. Ask the Fund's Board of Trustees to review any specific matter relating to the determination of the Employer's withdrawal liability and the schedule of payments;
2. Identify any inaccuracy in the determination of the amount of the Employer's prorated share of the UVBL; or
3. Provide the Board of Trustees with any additional relevant information regarding the Employer's withdrawal liability.

Polar Refrigeration
February 21, 2019
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Please note that any request for a review of the Employer's withdrawal liability determination or any other information regarding the withdrawal liability determination must be provided within 90 days of your receipt of this notice and demand. Any such request should be directed to the attention of the Fund's Board of Trustees and mailed or delivered to the Administrative Office at the address provided above. If such a request for review is not made within 90 days of your receipt of this notice and demand, any right to an arbitration under ERISA § 4221 shall be deemed waived.

Regardless of any request to review or appeal of the withdrawal liability assessment or the payment schedule, payments must begin pursuant to the payment schedule. See ERISA § 4219(c)(2). Failure to make the scheduled payments shall be considered a default and may result in litigation and the payment of attorney fees and interest.

Sincerely,



Donna Whitford
Administration Office

LP/DW:adg opeiu#8
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Attachments

cc: Trust Officers
Trust Counsel
Trust Actuary
UA Local 367

Exhibit 1

ALASKA PLUMBING AND PIPEFITTING INDUSTRY PENSION PLAN
WITHDRAWAL LIABILITY FOR POLAR REFRIGERATION

Withdrawal Liability for Withdrawal During 2018					
Year Ended December 31:	Unamortized Balance of Withdrawal Liability Pools		Contributions During 5-Year Period Ended Prior to Date Pool Established		Liability Allocated (5) divided by (4), times the sum of (5) and (3)
	Basic Pools	Reallocated Pools	Total Plan Contributions*	Employer Contributions	
(1)	(2)	(3)	(4)	(5)	(6)
2008	\$ 32,285,232	\$ 0	\$ 28,615,828	\$ 34,531.85	\$ 38,959.86
2009	(17,100,834)	0	31,409,031	64,311.20	(35,014.61)
2010	(5,018,433)	0	34,443,320	90,617.30	(13,203.05)
2011	24,904,711	0	36,205,122	131,230.77	90,270.77
2012	(4,940,239)	0	40,392,788	174,376.50	(21,327.11)
2013	(1,248,087)	0	42,924,705	221,619.46	(6,443.85)
2014	18,164,132	0	46,426,588	257,137.70	100,603.63
2015	16,165,504	0	49,404,078	260,609.02	85,273.85
2016	20,990,191	188,159	53,321,234	286,261.08	113,698.37
2017	39,980,298	0	53,904,061	285,177.50	211,514.34

- A. Gross Liability (Sum of Column 6), but not less than zero
- B. De Minimis
- C. Deductible: Lesser of (B) or [(\$150,000 – (A)], but not less than zero
- D. Net Withdrawal Liability: (A) – (C), but not less than zero

* Excluding contributions of previously withdrawn employers

Exhibit 1 (continued)

ALASKA PLUMBING AND PIPEFITTING INDUSTRY PENSION PLAN
WITHDRAWAL LIABILITY FOR POLAR REFRIGERATION

Calculation of Amortization Schedule

	Calculation of Amortization Schedule
A.	Highest consecutive 3-year average contributory hours during the 10-year period January 1, 2008 through December 31, 2017
B.	Highest hourly contribution rate in the 10-year period January 1, 2009 through December 31, 2018
C.	Annual amortization payment: (A) x (B)
D.	Quarterly payment: (D) / 4
E.	Number of Full Quarterly Payments 35
F.	Final Quarterly Payment \$17,614.38

Exhibit 2**ALASKA PLUMBING AND PIPEFITTING INDUSTRY PENSION PLAN****WITHDRAWAL LIABILITY FOR POLAR REFRIGERATION**

<u>Plan Year</u>	<u>Contributions</u>	<u>Hours</u>
2004	\$ 0.00	0.00
2005	5,955.38	2,292.75
2006	5,709.56	2,088.50
2007	9,326.14	2,850.25
2008	13,540.76	3,099.50
2009	29,779.35	4,067.00
2010	32,261.48	4,151.60
2011	46,323.04	6,014.00
2012	52,471.87	6,108.75
2013	60,783.72	6,369.25
2014	65,297.60	6,849.25
2015	35,732.80	3,652.00
2016	71,975.10	6,728.50
2017	51,388.29	4,302.00

EXHIBIT B



Neil J. Gregorio 412-594-3911
ngregorio@tuckerlaw.com

July 11, 2019

VIA ELECTRONIC MAIL - fin.cksa@gmail.com; dave.cksa@gmail.com
VIA REGULAR MAIL AND UPS OVERNIGHT

Dave Sheffrey
Polar Refrigeration
Commercial Kitchen Solutions
Commercial Kitchen Repair
557 E. Fireweed Lane
Suite C
Anchorage, AK 99503

Re: Alaska Plumbing and Pipefitting Industry Pension Fund
Withdrawal Liability - 60 Day Cure Notice
Polar Refrigeration

Dear Mr. Sheffrey:

We represent the Alaska Plumbing and Pipefitting Industry Pension Fund (the "Pension Fund").

By letter dated February 21, 2019, the Pension Fund sent Polar Refrigeration a withdrawal liability Notice and Demand letter pursuant to ERISA § 4219(b)(1)(a), 29 U.S.C. § 1399(b)(1)(a). Under ERISA, the Notice and Demand letter applied to not only Polar Refrigeration, but also to all members of its controlled group and its successors. Therefore, all references to Polar Refrigeration in this letter also encompass members of the Polar Refrigeration controlled group and its successors.

The Notice and Demand letter informed Polar Refrigeration that the Pension Fund has determined that Polar Refrigeration triggered a complete withdrawal to the Pension Fund and that the amount of withdrawal liability attributable to Polar Refrigeration is \$564,332.20. The letter also set forth a payment schedule that included 35 monthly payments of \$20,293.62 each, plus a final monthly payment of \$17,614.38. Payments were required to commence on or before May 1, 2019.

Because the Pension Fund did not receive a payment by May 1, 2019, Polar Refrigeration now has 60 days to cure. Within that time period, Polar Refrigeration must make the first missed payment of \$20,293.62 to the Pension Fund, plus liquidated damages of 10% and accrued interest of 12% per annum, as required by the Pension Fund's Trust Agreement.

Failure to cure will result in the Pension Fund initiating a federal lawsuit against Polar Refrigeration under ERISA § 4301, 29 U.S.C. § 1451. In that lawsuit, the Pension Fund will accelerate and recover all of the outstanding withdrawal liability, plus accrued

Dave Sheffrey
July 11, 2019
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interest on the total outstanding liability from the due date of the first missed payment, pursuant to ERISA § 4219(c)(5), 29 U.S.C. § 1399(c)(5). The Pension Fund will also recover all of the mandatory add-ons under ERISA § 502(g)(2), 29 U.S.C. § 1132(g)(2), including additional interest, liquidated damages, attorneys' fees and costs.

Thank you for your attention to this matter.

Very truly yours,

Neil J. Gregorio

Neil J. Gregorio

NJG/rmb

c: Alaska Plumbing and Pipefitting Industry Pension Fund
Tom Sheffrey (via email at tsheffrey.polar@gmail.com)

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